

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 11, 2008

D051440 People v. Wilson

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Aaron, J.

D050184 People v. Davalos

The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Irion, J.

D049943 Dimension One Spa Inc., v. Van Eetvelde

The order is reversed and the matter is remanded with directions that the trial court vacate the order staying plaintiff's action and issue a new order denying defendant's motion in its entirety, and allowing further appropriate proceedings. The judicial notice request is denied. Costs on appeal shall be paid by defendant. Huffman, J.; We Concur: McConnell, P.J., Irion, J.

D050829 In re Marcos H., a Juvenile

The order of wardship is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D051061 People v. Matus

Upon filing an abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

D051884 City of San Diego v. Gallucci

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D051138 People v. Griffin

The judgment is modified by striking the \$307.05 restitution order. As so modified, the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment and to forward it to the Department of Corrections and Rehabilitation. Aaron, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D052353 Karen L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Karen L. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

D052331 Josefina M. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Martin R. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Martin R. is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 11, 2008 (Continued)

D050139 People v. Brown

The abstract of judgment is ordered modified by deletion of any reference to the section 667.5, subdivision (b), finding. In all other respects the judgment is affirmed. Benke, J.;
We Concur: McConnell, P.J., Irion, J.

D052415 Chavez v. Superior Court of San Diego County/People

The petition is denied as incomplete.

D051508 People v. Reeves

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D051667 Lee v. Cuddeback

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

D049350 Brand v. Regents of the University of California et al.

The opinion filed January 18, 2008, is ordered certified for publication. The attorneys of record are: Joel C. Golden for Plaintiff and Appellant. Littler Mendelson, John S. Adler and Lara K. Strauss for Defendants and Respondents.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald
Clerk: D. Moore

D050994 In re Melanie S. et al., Juveniles

Cause called on merits. Valerie N. Lankford, Esq. argued for appellant. Erica Gardner, Deputy County Counsel argued for respondent. Amanda Benedict, Esq. argued for the minor.
Ms. Lankford replied. Cause submitted.

Court recessed at 9:33 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

**D050514 Architects/Delawie Wilkes Rodrigues Barker v. Quest Construction
Engineering & Management, Inc.**

Cause called on merits. Douglas Scott Waggaman, Esq. argued for appellant. Matthew W. Johnson, Esq. argued for respondent. Mr. Waggaman replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 11, 2008 (Continued)

Court recessed at 9:47 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D051245 Davis v. Financial Freedom Senior Funding Corporation

Cause called on merits. Christopher Holmes Findley, Esq. argued for respondent. Clinton F. Jones, Esq. argued for appellant. Cause submitted.

D051176 In re Jonathan H. et al., Juveniles

Cause called on merits. Maryann Marisa Milcetic, Esq. argued for appellant Jacelyn A. Ms. Kaiser was not present in oral argument for appellant, Lyman H., but Ms. Milcetic appeared on behalf of Ms. Kaiser. Valerie Lankford, Esq. argued for the minor. Katherine Bird, Deputy Counsel argued for respondent. Cause submitted.

D049959 Sanders v. Sanders

Cause called on merits. Paul E. Gavin, Esq. argued for appellant. Richard R. Ravreby, Esq. argued for respondent. Mr. Gavin replied. Cause submitted.

D050373 The Upper Deck Company et al. v. Orrick, Herrington & Sutcliffe LLP

Cause called on merits. Bradley Jacobs, Esq. argued for appellant. Matthew W. Mahoney, Esq. argued for respondent. Mr. Jacobs replied. Cause submitted.

Court recessed at 11:00 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

Clerk: D. Moore

D050659 Martin v. West Credit Corp. Inc., et al.

Cause called on merits. Gerald Martin, argued for appellant in pro per. Charles D. Nachand, Esq. argued for respondent. Mr. Martin replied. Cause submitted.

D050084 Williams et al. v. State of California Franchise Tax Board

Cause called on merits. Noel W. Spaid, Esq. argued for appellant. Leslie Branman Smith, Deputy Attorney General argued for respondent. Ms. Spaid replied. Cause submitted.

D050360 Rodriguez v. Wenger

Cause called on merits. Sharon J. Arkin, Esq. argued for appellant. Gregory W. Pollack, Esq. argued for respondent. Ms. Arkin replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 11, 2008 (Continued)

Court recessed at 2:14 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller

D050160 Villa Vista Mobile Estates Transitional Team v. Collins et al.

Cause called on merits. James C. Mitchell, Esq. argued for appellant. C. William Dahlin, Esq. argued for respondent. Mr. Mitchell replied. Cause submitted.

D049563 Zagami, Inc. v. James Crone & Associates, Inc.

D050090 Zagami, Inc. v. James Crone & Associates, Inc.

Cause called on merits. Richard W. Weinthal, Esq. argued for appellant. David A. Niddrie, Esq. argued for respondent. Mr. Weinthal replied. Cause submitted.

Court recessed at 3:00 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

D050165 Domby v. Moritz

Cause called on merits. Duane Albert Admire, Esq. argued for appellant. Lisa Cooney, Esq. argued for respondent. Mr. Admire replied. Cause submitted.

Court recessed at 4:00 p.m. until Wednesday, February 13, 2008 at 9:00 a.m.

D052481 Starbucks Corporation v. The Superior Court of San Diego County/Chou

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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February 13, 2008

D051830 Sony Electronics, Inc. v. Superior Court of San Diego County/Lieber
The petition is denied.

D051829 Sony Electronics, Inc. v. Superior Court of San Diego County/Hapner
The request for judicial notice is denied. The petition is denied.

D042339 Priscilla R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency
The attorney for petitioner Priscilla R. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

D051098 People v. Fletcher
The judgment is affirmed. Aaron, J.; We Concur: Nares, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2008 (Continued)

D051734 In re Brooks on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Justices Benke, McIntyre and Aaron. We take judicial notice of the direct appeal D038105 and the superior court file SCE207028.

Hasim Brooks represented himself at trial and the jury convicted him of one count of robbery, one count of attempted robbery and found true Brooks personally used a firearm on both counts. On May 24, 2001, the court sentenced him to prison for a term of 16 years. We affirmed the judgment on appeal (D038105). Brooks contends his request to represent himself under *Faretta v. California* (1975) 422 U.S. 806 was invalid because it was the result of appointed counsel's incompetence.

The record shows on December 12, 2000, Brooks moved to replace appointed counsel George Osper under *People v. Marsden* (1970) 2 Cal.3d 118 on the grounds Brooks did not get along with Osper, Brooks did not think Osper sufficiently investigated the case and Osper advised him to accept the prosecution's offer. After the court denied the motion, Brooks stated he wanted to represent himself. The court explained to Brooks that self-representation was ill-advised and he should "sleep on it." On December 13, 2000, Brooks reiterated he wanted to represent himself and executed a waiver under *People v. Lopez* (1977) 71 Cal.App.3d 568. The court advised Brooks he would be treated as an experienced lawyer and would not be "cut any slack." Brooks stated he had a high school education and "55 credits towards an associate degree." He said he had no history of mental problems of any type. Brooks said he would need "maybe 45 days" to prepare for trial. He explicitly rejected the prosecution's offer of 16 years in prison. The court granted Brooks's motion for self-representation and set trial for January 22, 2001.

Voir dire commenced on March 28, 2001. Brooks stated he was not ready to proceed because his mental state precluded him from acting as his own counsel and he wanted substitute counsel.¹ The court denied Brooks's request for a continuance and request for new counsel. After a four-day trial, the jury found Brooks guilty.

The record shows the trial court made a thorough inquiry of Brooks when he exercised his right of self-representation on December 13, 2000, and determined Brooks made a voluntary, intelligent and understanding waiver of the right to counsel. At no time in the three months before trial did Brooks complain that he did not want to represent himself but was compelled because of attorney Osper's incompetence. Nor has Brooks shown that Osper was in fact incompetent or that Brooks had a meritorious defense. The petition is denied.

¹ On appeal we rejected Brooks's claim the trial court erred by denying his request to appoint counsel without investigating whether he was competent to act as his own attorney.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2008 (Continued)

D050767 In re the Marriage of Melvin

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

D051869 In re Adler on Habeas Corpus

The petition is denied.

D051146 In re T.S., a Juvenile

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Huffman, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion
Clerk: D. Moore

D048290 People v. Matthews

Cause called on merits. Carl Fabian, Esq. argued for appellant. Marvin E. Mizell, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

Court recessed at 9:40 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

D051548 In re Michael B. et al., Juveniles

Cause called on merits. Neale Bachmann Gold, Esq. argued for appellant. Erica Gardner, Deputy County Counsel was present in oral argument for respondent. William Henry Hook, Esq. was present in oral argument for the minor. Cause submitted.

Court recessed at 9:52 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D049484 People v. Martinez et al.

D049519 People v. Acero

D051985 In re Martinez on Habeas Corpus

Cause called on merits. Charles Khoury, Esq. argued for appellants Martinez and Acero. Scott C. Taylor, Deputy Attorney General argued for respondent. Mr. Khoury replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
February 13, 2008 (Continued)

Court recessed at 9:58 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

D049905 Searles Valley Minerals Operations Inc., et al. v. State Board of Equalization

Cause called on merits. Robert A. Julian, Esq. argued for appellant. Leslie Branman Smith, Deputy Attorney General argued for respondent. Mr. Julian replied. Cause submitted.

Court recessed at 10:28 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D050450 Duffins et al. v. Valenti et al.

Cause called on merits. David R. Clark, Esq. argued for appellant. Douglas S. Gilliland, Esq. argued for respondent. Mr. Clark replied. Cause submitted.
Both cases incorporated for Mr. Clark's argument.

D050446 Porter et al. v. Valenti International Limited LLC. et al.

Cause called on merits. Elaine L. Heine, Esq. argued for respondent. David R. Clark, Esq. argued for appellant. Cause submitted.

Court recessed at 10:56 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion
Clerk: D. Moore

D048918 People v. Ellison

Cause called on merits. Russell S. Babcock, Esq. argued for appellant. Lynne McGinnis, Deputy Attorney General argued for respondent. Mr. Babcock replied. Cause submitted.

Court recessed at 2:00 p.m. to change panel members: New panel members: The Honorable Patricia Benke, Acting Presiding Justice and The Honorable Associate Justices Gilbert Nares and Judith Haller

D049282 People v. Behnke

Cause called on merits. Matthew Braner, Esq. argued for appellant. William Wood, Deputy Attorney General argued for respondent. Mr. Braner replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2008 (Continued)

Court recessed at 2:35 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Joan Irion

D050472 Parziale et al. v. Banc of America Investment Services Inc., et al.

Cause called on merits. Brett M. Schuman, Esq. argued for appellant, Bank of America. Michael G. Nardi, Esq. argued for appellant, Parziale. Michael J. Lawson, Esq. was present in oral argument, but did not argue. Cause submitted.

Court recessed at 3:38 p.m. until Thursday, February 14, 2008 at 9:00 a.m.

D051870 In re Tena on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 14, 2008

D051346 In re Elizabeth G., a Juvenile

The appeal is dismissed. McConnell, P.J.; We Concur: Nares, J., Haller, J.

D050613 In re Milton R., a Juvenile

The order is affirmed. Haller, J.; We Concur: McConnell, P.J., Irion, J.

D051073 People v. Ruiz

The judgment is affirmed. McIntyre, J.; We Concur: O'Rourke, J., Aaron, J.

D051296 In re Esperanza R., a Juvenile

The judgment is affirmed. McConnell, P.J.; We Concur: Nares, J., Irion, J.

D050064 People v. Bonin

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Irion, J.

D051266 In re Dialasia W., a Juvenile

The judgment is affirmed. McIntyre, J.; We Concur: McDonald, Acting P.J., Aaron, J.

D049823 Millenbah v. Kaelin et al.

The order is affirmed. The defendants are entitled to costs on appeal. McConnell, P.J., Benke, J., Nares, J.

**D052456 Victor M. et al. v. Superior Court of San Diego County/San Diego County
Health and Human Services Agency**

The court has received from the children's counsel a letter in response to this court's order of February 6, 2008. It appears from the letter that counsel wishes the Notice of Intent filed on February 1, 2008 pursuant to California Rules of Court, Rule 8.450 to be construed as a Notice of Intent pursuant to California Rules of Court, Rule 8.454. The challenged order of January 28, 2008 is not a proper subject for a Notice of Intent pursuant to Rule 8.454. Insofar as counsel is attempting to challenge prior hearing dates via Rule 8.454, the challenge is untimely. The case is dismissed.

D049148 People v. Florence

The judgment is affirmed. McConnell, P.J.; We Concur: O'Rourke, J., Irion, J.

D049707 Paredes et al. v. State of California

The judgment and postjudgment order are affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Benke, J.

D048647 Ashford v. Goepfinger-Curran Development

The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 14, 2008 (Continued)

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion
Clerk: D. Moore

D050811 In re Trinity R., a Juvenile

Cause called on merits. Joanne Willis Newton, Esq. argued for appellant. Andrea St. Julian, Esq. argued for the minor. Katharine Bird, Deputy County Counsel argued for respondent. Ms. Newton replied. Cause submitted.

Court recessed at 9:33 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion

D049742 Morris v. Badiei

Cause called on merits. Donald A. Green, Esq. was not present in oral argument for appellant. Scott Andrew Savary, Esq. was present in oral argument for respondent, and submitted on the briefs. Cause submitted.

D048690 People v. Morreo

Cause called on merits. Carl Fabian, Esq. argued for appellant. James Flaherty, Deputy Attorney General argued for respondent. Mr. Fabian replied. Cause submitted.

D050306 Tebbi et al. v. Rose et al.

Cause called on merits. Masoud Tebbi, Esq. argued for appellant, in pro per. R. Craig Clark, Esq. was present in oral argument for respondent and submitted on the briefs. Cause submitted.

D050307 England et al. v. Fisher Thurber LLP et al.

Cause called on merits. Donald A. English, Esq. argued for appellant. Jill M. Sullivan, Esq. argued for respondent. Mr. English replied. Cause submitted.

Court recessed at 10:35 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D050260 Del Cerro Action Council v. Board of Trustees of California State University

Cause called on merits. Mark J. Dillon, Esq. argued for appellant. Carey Lynn Cooper, Esq. argued for respondent. Mr. Dillon replied. Cause submitted.

Court recessed at 11:36 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 14, 2008 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. Moore

D049875 Lauer et al. v. Schaefer

Cause called on merits. J. Michael Schaefer, argued for appellant, in pro per. Seana K. Scholtemeyer, Esq. argued for respondent. Mr. Schaefer replied. Cause submitted.

D048306 People v. Leon

D048304 People v. Leon

Cause called on merits. Arthur Martin, Esq. argued for appellant. Ray DiGuseppi, Deputy Attorney General argued for respondent. Mr. Martin replied. Theodore Cropley, Deputy Attorney General was present in oral argument on appeal D048304, but did not argue. Cause submitted.

Court recessed at 2:09 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D049471 Keener et al. v. Jeld-Wen Inc., et al.

Cause called on merits. Jeff G. Harmeyer, Esq. argued for appellant. Paul Fogel, Esq. argued for respondent. Mr. Harmeyer replied. Cause submitted.

Court recessed at 2:54 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D049620 White v. Warren

Cause called on merits. Stephen Temko, Esq. argued for appellant. Edward I. Silverman, Esq. argued for respondent. Mr. Temko replied. Cause submitted.

D050982 In re Julia S., a Minor

D051498 In re Efrain G. on Habeas Corpus

Cause called on merits. Joanne Willis Newton, Esq. argued for appellant. Susan Bookout, Esq. argued for the minor. Jamie A. Moran, Esq. argued for respondent. Ms. Newton replied. Cause submitted as to D050982.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 14, 2008 (Continued)

D050433 Qualcomm, Inc. v. Certain Underwriters @ Lloyd's London

Cause called on merits. David B. Goodwin, Esq. argued for appellant. Daniel Tranen, Esq. argued for respondent. Mr. Goodwin replied. Cause submitted.

Court recessed at 4:10 p.m. until Friday, February 15, 2008 at 9:00 a.m.

D051835 In re Oak on Habeas Corpus

The petition is denied.

D051435 People v. Galindo

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D051750 People v. Cameron

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting, P.J., McIntyre, J.

D047700 Parker, Milliken, Clark, O'Hara & Samuelian v. De La Fuente et al.

The judgment is reversed with instructions to enter judgment in favor of De La Fuente. De La Fuente to recover its costs of appeal. Benke, Acting P.J.; We Concur: Haller, J., McDonald, J.

D051219 People v. Shrin

The judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., Irion, J.

D049277 American Highway Technology v. Sapper et al.

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear own costs on appeal.

D052497 In re the Marriage of Rebecca and Michael Straub

The petition for writ of supersedeas and request for stay have been read and considered by Justices Benke, McIntyre and Aaron. The petition is denied.

D052395 Stephen v. Hoffman

Appellant's "Application for Permission to Appeal or to file Writ Petition" received by this court on February 14, 2008, is DENIED. (Code of Civ. Proc. § 391.7, subd. (b).) The appeal filed with the Superior Court on January 14, 2008, is DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D050755 People v. Ziebarth

The judgment is affirmed. Huffman, Acting, P.J.; We Concur: McDonald, J., Aaron, J.

D051265 In re Carlos R., a Juvenile

The judgment is affirmed. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.

D050306 Tebbi et al. v. Rose et al.

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Nares, J.

D052007 In re Bianca V., Juvenile

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

D051899 Jameson v. Superior Court of San Diego County/Desta

The petition is denied.

D048918 People v. Ellison

The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., Nares, J.

D048937 In re the Estate of Young

The judgment is reversed for further proceedings consistent with the views herein expressed, and the trial court is directed to modify the judgment to permit appropriate proceedings to establish the value of the real property taken, for the purpose of calculating double damages for which liability was previously established; such further proceedings shall also resolve the bankruptcy discharge issues as to Evans individually, and shall be held in conjunction with the previously ordered accounting. In all other respects, the judgment is affirmed. Objectors to pay all costs on appeal. CERTIFIED FOR PUBLICATION Huffman, J.; We Concur: McConnell, P.J., O'Rourke, J.

D049432 People v. Elder

The restitution fine under Penal Code section 1202.45 is stricken from the judgment. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and transmit the abstract to the Department of Corrections and Rehabilitation. Haller, J.; We Concur: McConnell, P.J., Irion, J.

D051124 People v. Merkel

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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February 15, 2008 (Continued)

D052104 Jameson v. Superior Court of San Diego County/Desta

The petition for writ of mandate has been read and considered by Justices Benke, McIntyre and Aaron. The petition is denied.

D051838 In re Alexander Gregory Valentine on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Justices Benke, McIntyre and Aaron. We take judicial notice of the direct appeal D030699.

A jury convicted Alexander G. Valentine of the first and second degree murders of his parents. On February 24, 1998, the court sentenced him to life in prison without the possibility of parole and a concurrent sentence of 15 years to life in prison. The court also imposed a restitution fine under Penal Code section 1202.4, subdivision (b), in the amount of \$10,000 (all statutory references are to the Penal Code). We affirmed the judgment on January 10, 2000.

Valentine had 657 days of custody credits at the time he was sentenced. He contends the court abused its discretion when it did not apply the custody credits against the restitution fine, given that he is ineligible for parole, relying on section 2900.5, subdivision (a). That section provides:

"In all felony and misdemeanor convictions . . . when the defendant has been in custody . . . all days of custody of the defendant . . . shall be credited upon his or her term of imprisonment, or credited to any fine on a proportional basis, including, but not limited to, base fines and restitution fines, which may be imposed, at the rate of not less than thirty dollars (\$30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. *In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine* on a proportional basis, including, but not limited to, base fines and restitution fines." (Emphasis added.)

As noted in the emphasized portion above, the trial court was required to first apply the custody credits to the term of imprisonment. (See *People v. McGarry* (2002) 96 Cal.App.4th 644, 647 [monetary credit is based on *excess* custody credit].) It would be illogical to reduce or eliminate the restitution fines for persons who, because of the gravity of their crimes, are ineligible for parole.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 15, 2008 (Continued)

D051837 In re Garland Stovall on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Justices Benke, McIntyre and Aaron. We take judicial notice of the direct appeal D021845 and prior petition D039581.

A jury convicted Garland L. Stovall of burglarizing a vehicle and found he had two prior strike convictions for residential burglaries. On August 8, 1994, the court sentenced Stovall to 25 years to life in prison. This court affirmed the conviction on November 1, 1995.

Stovall claims his sentence is in violation of *Cunningham v. California* (2007) 549 U.S. ___, [127 S.Ct. 856], because the trial court found his lengthy criminal history to be "factors in aggravation that were not submitted to the jury as factors that would elevate his sentence beyond the statutory maximum." The record shows the trial court considered Stovall's criminal history in determining it would not grant Stovall's motion to dismiss one or more of his prior strike convictions. *Cunningham* does not apply to Stovall because the jury found Stovall had prior strike convictions, Stovall was not sentenced to an upper term under California's Determinate Sentencing Law and his case was final before *Cunningham* was decided. (See *In re Consiglio* (2005) 128 Cal.App.4th 511, 516; *People v. Amons* (2005) 125 Cal.App.4th 855, 865.) We do not address Stovall's "objection" to the superior court order denying his petition in that court. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.)

The petition is denied.

D050281 People v. Luevano

The judgment is affirmed. Huffman, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D051427 In re David Carlton Brown on Habeas Corpus

The petition is denied.

D049879 Butterwick et al. v. Fitzpatrick et al.

Order affirmed. Respondents are entitled to costs on appeal. Haller, Acting P.J.;
We Concur: McDonald, J., McIntyre, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: D. Moore

D051056 In re Valerie W. et al., Juveniles

Cause called on merits. Maryann Marisa Milcetic, Esq. argued for appellant. Valerie Lankford, Esq. argued for the children. Katharine Bird, Deputy County Counsel argued for respondent. Nicole Williams, Esq. was present in oral argument for appellant, Star W., but did not address the court. Ms. Milcetic replied. Ms. Lankford replied. Ms. Bird replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 15, 2008 (Continued)

Court recessed at 9:50 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

D049800 Puentes et al. v. Wells Fargo Home Mortgage, Inc.

Cause called on merits. Norman B. Blumenthal, Esq. argued for appellant. Edward D. Vogel, Esq. argued for respondent. Mr. Blumenthal replied. Cause submitted.

Court recessed at 10:21 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D049938 Integrated Landscape Group, Inc. v. Attisha

Cause called on merits. Jack I. Mann, Esq. argued for appellant. Lawrence T. Osuch, Esq. argued for respondent. Mr. Mann replied. Cause submitted.

Court recessed at 10:57 a.m. until 1:00 p.m.

Court reconvened at 1:00 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. Moore

D050107 Samber, Inc. v. City of Oceanside et al.

Cause called on merits. John W. Howard, Esq. argued for appellant. Leslie M. Gallagher, Deputy City Attorney argued for respondent. Mr. Howard replied. Cause submitted.

Court recessed at 1:29 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

D050119 Garcia v. GMS Janitorial Services, Inc.

Cause called on merits. Teresa Trucchi, Esq. argued for appellant. Joseph C. Kracht, Esq. argued for respondent. Ms. Trucchi replied. Cause submitted.

Court recessed at 1:47 p.m. ending the 1:00 p.m. session.

Court reconvened at 2:00 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 15, 2008 (Continued)

Present: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron
Clerk: D. Moore

D050314 Hernandez v. Barber

Cause called on merits. John L. Staley, Esq. argued for appellant. Richard H. Martha, Esq. argued for appellant. Mr. Staley replied. Cause submitted.

D049915 Kassab v. San Diego Police Department et al.

Cause called on merits. Paul P. Cheng, Esq. argued for appellant. David Stotland, City Attorney argued for respondent. Mr. Cheng replied. Cause submitted.

D049580 People v. Nava

Cause called on merits. Eugene G. Iredale, Esq. argued for appellant. Donald Ostertag, Deputy Attorney General argued for respondent. Mr. Iredale replied. Cause submitted.

D050411 National Enterprises, Inc. v. Department of Transportation

Cause called on merits. David R. Hunt, Esq. argued for appellant. Glenn Brian Mueller, Esq. argued for respondent, Department of Transportation. John J. Flynn, III, Esq. argued for respondent, California Transportation Ventures, Inc. Mr. Hunt replied. Cause submitted.

Court recessed at 3:18 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D051022 People v. Flores

Cause called on merits. Craig Fisher, Deputy District Attorney argued for appellant. Laura Arnold, Deputy Public Defender argued for respondent. Cause submitted.

D050182 Graboski v. Graboski

Cause called on merits. Jack F. Fitzmaurice, Esq. argued for appellant. Stanley D. Prowse, Esq. argued for respondent. Mr. Fitzmaurice replied. Cause submitted.

D050564 Brede v. Brede

Cause called on merits. Herbert C. Brede, argued for appellant in pro per. William A. Johnson, Jr., Deputy County Counsel was present in oral argument for respondent, Matthews, but did not argue. James Gregory Boyd, Esq. argued for respondent, Sean Brede. Mr. Herbert Brede replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 15, 2008 (Continued)

D049436 Longs Drug Stores California, Inc. v. Schwab et al.

Cause called on merits. Daniel J. Gonzalez, Esq. argued for appellant. Margaret M. Mann, Esq. argued for respondent. Mr. Gonzalez replied. Cause submitted.

Court adjourned at 4:45 p.m.

D052518 Arthroscopic & Laser Surgery v. Superior Court of San Diego County/Ellery

The petition is denied.